

SENATE BILL 3539

By Herron

AN ACT to amend Tennessee Code Annotated, Section 37-1-126, relative to representation of parties in juvenile court proceedings.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 37-1-126(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a) A child is entitled to representation by legal counsel at all stages of any delinquency proceedings, or proceedings alleging unruly conduct which place the child in jeopardy of being removed from the home pursuant to § 37-1-132(b). In proceedings involving child abuse prosecutions pursuant to §§ 37-1-412 and 39-15-401; contributing to the delinquency or unruly behavior or dependency and neglect of a child; violation of compulsory school attendance pursuant to §§ 49-6-3007 and 3009; contempt; abuse, dependency or neglect; or termination of parental rights, an adult is entitled to representation by legal counsel at all stages of any proceeding under this part. If such person is indigent, the court shall provide counsel for such person. If a person appears without counsel, the court shall ascertain whether the person knows of the right to counsel and of the right to be provided with counsel by the court if the person is indigent. The court may continue the proceeding to enable a person to obtain counsel and shall provide counsel for an unrepresented indigent person upon request. In all delinquency hearings or in such unruly hearings in which the child may be in jeopardy of being removed from the home as specified in § 37-1-132(b), counsel must be provided for a child not represented by such child's parent, guardian, guardian ad litem or custodian or where the child's interests conflict with the parent, guardian, custodian or guardian ad

litem. If the interest of two (2) or more persons conflict, separate counsel may be provided for each of them.

SECTION 2. Tennessee Code Annotated, Section 37-1-126(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) A person is indigent if that person does not possess sufficient means to pay reasonable compensation for the services of a competent attorney.

SECTION 3. Tennessee Code Annotated, Section 37-1-126(c)(1), is amended by adding the following new language after the third sentence of the current subsection:

If the indigent person for whom counsel is appointed is an adult, the court shall also assess and collect an administrative fee as provided herein.

SECTION 4. Tennessee Code Annotated, Section 37-1-126(c), is further amended by deleting the following language:

(2) The administrative fee shall be separate from and in addition to any other contribution or recoupment assessed pursuant to law for defrayal of costs associated with the provision of court-appointed counsel. The clerk of the court shall retain a commission of five percent (5%) of each dollar of administrative fees collected and shall transmit the remaining ninety-five percent (95%) of each such dollar to the state treasurer for deposit in the state's general fund.

(3) If the administrative fee is not paid prior to disposition of the case, then the fee shall be collected in the same manner as costs are collected; provided, that upon disposition of the case, moneys paid to the clerk, including any cash bond posted by or on behalf of the child, shall be allocated to taxes, costs and fines and then to the administrative fee and any recoupment ordered. The administrative fee and any recoupment or contribution ordered for the services of court-appointed counsel shall apply and shall be collected even if the charges against the child are dismissed.

(4) As part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court and with the Tennessee administrative director of the courts. The report shall indicate the following:

(A) Number of children for whom the court appointed counsel pursuant to this section;

(B) Number of children for whom the court waived the administrative fee;

(C) Number of children from, or on behalf of, whom the clerk collected administrative fees;

(D) Total amount of commissions retained by the clerk from such administrative fees; and

(E) Total amount of administrative fees forwarded by the clerk to the state treasurer.

and by substituting instead the following:

(2) The administrative fee shall be separate from and in addition to any other contribution or recoupment assessed pursuant to law for defrayal of costs associated with the provision of court-appointed counsel. The clerk of the court shall retain a commission of five percent (5%) of each dollar of administrative fees collected and shall transmit the remaining ninety-five percent (95%) of each such dollar to the state treasurer for deposit in the state's general fund.

(3) If the administrative fee is not paid prior to disposition of the case, then the fee shall be collected in the same manner as costs are collected; provided, that upon disposition of the case, moneys paid to the clerk, including any cash bond posted by or on behalf of the child or adult, shall be allocated to taxes, costs and fines and then to the administrative fee and any recoupment ordered. The administrative fee and any

recoupment or contribution ordered for the services of court-appointed counsel shall apply and shall be collected even if the charges against the party are dismissed.

(4) As part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court and with the Tennessee administrative director of the courts. The report shall indicate the following:

(A) Number of children and adults for whom the court appointed counsel pursuant to this section;

(B) Number of children and adults for whom the court waived the administrative fee;

(C) Number of children and adults from, or on behalf of, whom the clerk collected administrative fees;

(D) Total amount of commissions retained by the clerk from such administrative fees; and

(E) Total amount of administrative fees forwarded by the clerk to the state treasurer.

SECTION 5. This act shall take effect on July 1, 2008, the public welfare requiring it.